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SUPREME COURT OF THE UNITED STATES.

No. 169.

WILLIAM CHRISTY, PLAINTIFF IN ERROR,

vs.

WILLIAM T. SCOTT.

ERROR FROM THE DISTRICT COURT, UNITED STATES, FOR THE DISTRICT OF TEXAS.

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[GIDEON, Print.]

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

Pleas held before the honorable John C. Watrous, judge of the district court of the United States, for the district aforesaid, at a term of said court begun and held at the court-house of said court, in the city of Galveston, and State of Texas, on the second Monday, being the 12th day of May, A. D. 1851, and seventy-fifth of American independence.

WILLIAM CHRISTY, plaintiff,
vs.
WILLIAM T. SCOTT, defendant.

Trespass.

Be it remembered, that, heretofore, to wit, on the 10th day of July, A. D. 1849, the plaintiff aforesaid, by his attorney, Robert Hughes, came into the clerk's office of the said district court aforesaid, and filed his petition against the defendant, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Texas.

District court, December term, 1849.

To the honorable John C. Watrous, judge of the said district.

The petition of William Christy, a citizen and resident of the city of New Orleans, and State of Louisiana, plaintiff, against William T. Scott, a citizen and resident of the county of Harrison, and State of Texas, defendant; and thereupon your petitioner, humbly complaining, respectfully represents unto your honor that heretofore, to wit, on the first day of June, A. D. 1849, at, to wit, in the district aforesaid, he was seized in his demesne as of fee, of, in, and to a certain tract or parcel of land, situate, lying, and being in the county of Harrison aforesaid, in the district aforesaid, between the Sabine and Red rivers, and south of Soda lake, and butted and bounded as follows, to wit: Beginning at a corner post from which a hickory, eighteen inches in diameter, bears south twenty-eight degrees west, two and three-fifths varas distant, and a pin oak, twenty inches in diameter, bears north twenty degrees west, three varas distant; thence north five thousand varas, intersecting, at the distance of fourteen hundred varas, a ravine running east, and at three thousand two hundred varas, a creek also running east, to the second corner from which a hickory, fifteen inches in diameter, bears north seventy degrees west, eleven varas distant, and an oak, fifteen inches in diameter, bears south fourteen

degrees east, four and a fifth varas distant; thence west fifteen thousand varas, intersecting, at the distance of twenty-four hundred varas, a creek running southeast, and at five thousand varas a ravine running northeast, and [at] six thousand varas a ravine also running northeast, and at twelve thousand two hundred varas, a creek also running northeast, to the third corner post, from which a black jack, fifteen inches in diameter, bears north four degrees east, five and two-fifths varas distant; thence south five thousand varas, intersecting at the distance of one hundred varas a ravine running east, and at three thousand four hundred varas a ravine also running east, to the fourth corner post, from which a black jack, twelve inches in diameter, bears north twenty-three degrees west, three and two-fifth varas distant, and another black jack, fourteen inches in diameter, bears south seventy-eight degrees east, five and two-fifths varas distant; thence east, to the first corner post, fifteen thousand varas, intersecting at the distance of six thousand seven hundred varas a ravine running southeast, at eleven thousand four hundred varas another ravine also running southeast, containing three leagues or seventy-five millions square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and being so seized, and then and there possessed of the same, the said William T. Scott, then and there, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms, entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said land and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted, and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your honor, and complain, that also, heretofore, to wit, on the said first day of June, A. D. 1849, in the district aforesaid, he was seized in his demesne, as of fee, of, in, and to another tract or parcel of land, situate, lying, and being in the said county of Harrison, also between the Sabine and Red rivers, and south of the Soda lake aforesaid, which is butted and bounded as follows, to wit: Beginning at a corner post, from which a red oak, eighteen inches in diameter, bears north forty-four degrees west, nine and three-fifths varas distant, and a hickory, ten inches in diameter, bears south eighty-four degrees east, six and three-fifths varas distant; thence north five thousand varas, intersecting at the distance of four hundred varas a creek, ten varas wide, running east, and at twelve hundred varas another creek, fifteen varas wide, running east, and at four thousand five hundred varas another creek, ten varas wide,

running east, to the second corner, a post, from which a red oak, eighteen inches in diameter, bears south seventy-six degrees west, nine and one-fifth varas distant, and a white oak, twelve inches in diameter, bears north seventy-six degrees east, fourteen varas distant; thence west five thousand varas to the third corner, a post, from which a hickory, eighteen inches in diameter, bears north twenty degrees west, three varas distant; thence south five thousand varas, intersecting at one thousand varas a creek, ten varas wide, running east, and at fourteen hundred varas another creek, ten varas wide, also running east, at twenty-six hundred varas another creek, ten varas wide, also running east, and at four thousand three hundred varas a ravine running east to the fourth corner, a post, from which a hickory, fifteen inches in diameter, bears north fifteen degrees east, three varas distant, and another hickory, fifteen inches in diameter, bears south eighty-eight degrees east, sixteen varas distant; thence south five thousand varas to the first corner, intersecting at the distance of three thousand varas a creek, ten varas wide, running northeast, containing one league, or twenty-five millions square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and being so thereof seized, and then and there possessed of the same, the said William T. Scott, then and there, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, with force and arms, entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitoner from the said lands and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted, and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your honor, and complain that, heretofore, to wit, on the said first day of June, A. D. 1849, at, to wit, in the district aforesaid, he was seized in his demesne, as of fee, of, in, and to another tract or parcel of land, situate, lying, and being in the said county of Harrison, in the district aforesaid, between the Sabine and Red rivers, south of Soda lake, and butted and bounded as follows, to wit:

Beginning at a post, from which a red oak, eighteen inches in diameter, bears south seventy-six degrees west, four and one-fifth varas distant; and a white oak, twelve inches in diameter, bears north seventy-six degrees east, fourteen varas distant; thence north five thousand varas, intersecting at the distance of one hundred varas a ravine running east, and at nineteen hundred varas a stream, ten varas wide, also running east, and at the distance of twenty-six hundred varas a ravine, running southeast to the second corner a post, from which a

black jack, sixteen inches in diameter, bears south eighty-eight degrees west, four and four-fifths varas distant, and a hickory, fourteen inches in diameter, bears north forty-three degrees east, six varas distant; thence west five thousand varas to a post, the third corner, from which an oak, fifteen inches in diameter, bears south fourteen degrees east, four and one-fifth varas distant, and a hickory, fifteen inches in diameter, bears north seventy degrees west, eleven varas distant; thence south five thousand varas, intersecting at twenty-one hundred varas a ravine running east, to a post, the fourth and last corner, from which a hickory, eighteen inches in diameter bears south, twenty-eight degrees west, two and three-fifths varas distant, and a red oak, twenty inches in diameter, bears north twenty degrees west, three varas distant; thence east five thousand varas to the first corner, containing one league, or twenty-five million square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and being so thereof seized, and then and there possessed of the same, the said Wm. T. Scott then and there, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms entered in and upon the said lands, situated, butted and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said lands and tenements, with the hereditaments and appurtenances, so situated as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

The premises considered, your petitioner prays that process of citation issue to the marshal of the district aforesaid, commanding, &c., that the said Wm. T. Scott may be made a defendant hereto, may appear and answer this petition; and that after due trial had by and before your honor, according to the rules of law, your petitioner may have judgment for such damages as he has sustained by reason of the premises, and for the recovery of the lands aforesaid, with the hereditaments and appurtenances aforesaid, for his costs about his suit in this behalf expended, with writ of possession upon recovery of said lands, &c., or that he may obtain such relief as he is entitled; and your petitioner, as in duty bound, will ever pray, &c.

ROBERT HUGHES, *P. Q.*

And afterwards, to wit, on the 10th day of July, in the year last aforesaid, the clerk of said court issued process of citation, in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

The President of the United States of America, to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Wm. T. Scott, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of December next, to answer the petition and complaint of William Christy, in an action amounting to the sum of twenty thousand dollars, of which you will serve the defendant with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this tenth day of [SEAL.] July, A. D. 1849, and seventy-fourth year *year* of the independence of the United States. JAMES LOVE, *Clerk*.

Which process of citation was returned by the marshal of said district with the following endorsement thereon, to wit:

Received 12th July, A. D. 1849, and executed 2d October, 1849, by serving the defendant in person with a true copy of this summons, and an attested copy of petition as furnished by the clerk of this court.

J. BATES,
U. S. marshal, district of Texas.

And afterwards, to wit, at a term of said court begun and held as aforesaid, on the first Monday in the month of December, in the year last aforesaid, and continued by adjournment to the 24th day of January, A. D. 1850, the following order was [made] herein, to wit:

By consent of the parties this cause is continued, and leave is given the defendant, until the first day of February next, to file his answer. And it is further agreed by the parties, that the surveyor of Harrison county shall go upon the land in controversy, upon a day to be designated by him, whereof twenty days is to be given to the parties herein, and survey and lay out the same as the parties shall direct and return a fair plot and report thereof to the next term of this court.

And afterwards, to wit, on the 4th day of February, in the year last aforesaid, the defendant, by his attorneys, Henderson, Hill, Frazier, and Shedd, came into said court and filed the defendant's answer in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Texas.

District court.

WILLIAM CHRISTY
vs.
WILLIAM T. SCOTT.

And now comes the said defendant, by his attorneys, and an-

swering the petition of the plaintiff says, that he denies all and singular the allegations in the said petition, and prays that the plaintiff be held to strict proof of the same.

2. And as to the trespasses and ejectments, or either or any of them, complained of by [the] plaintiff in his petition, the defendant says he is not guilty, and puts himself upon the country, &c.

3. And the defendant further says, that as to the pretended grant or title of the plaintiff to the land described in his petition, (if any paper title he has) the same bears date, to wit, the twentieth day of September, A. D. 1835, and the land described in said pretended grant or title, and in said petition, is, and was at the date of said grant, situated in the twenty frontier leagues bordering on the United [States] line, and said pretended grant was made without the approbation or assent of the executive of the national government of Mexico.

4. And the said defendant further answers and says, that if any such grant or title was made as by said plaintiff is pretended, the same was made (as by said plaintiff's pretended grant appears,) on, to wit, the twentieth day of September, A. D. 1835, and was not made by any public officer, commissioner, or authority, then, to wit, at the date of said pretended grant or title, existing in the State of Coahuila and Texas, competent to make the same.

5. And the said defendant further says, that the plaintiff claims the land sued for under and through a pretended grant from the government of the State of Coahuila and Texas made to one Miguel Arceniega, as a Mexican and purchaser, and purporting to have been procured for the said Arceniega by one William G. Logan, as his agent. And the defendant says, that the said pretended grant or title of the plaintiff to the land sued for is not valid in law, because the same was procured from the government of the State of Coahuila and Texas by fraud, in this, that the said Miguel Arceniega, and the said William G. Logan, combined and confederated together for the purpose of evading the law, then in force, allowing the sale of lands to Mexicans, and to them only; and falsely and fraudulently represented to the said government that the application by said Arceniega for the said grant of land was really and bona fide made for him by the said Logan, and that the said Arceniega was to be the real purchaser of said land, and to hold and enjoy the same as a Mexican citizen; while, in truth, the said Arceniega fraudulently permitted the said Logan to use his name, and, in his name, procure the said grant solely for the use and benefit of him, the said Logan, who was not, at the time of procuring said grant, a Mexican citizen; and who, by the false and fraudulent practices aforesaid, procured the said grant and appropriated the land granted to his (the said Logan's) own use and benefit.

6. And the said defendant says, that the plaintiff claims the premises described in his petition by a pretended grant purporting to have been made by authority of the government of the State of Coahuila and Texas to Miguel Arceniega, bearing date, to wit, the twentieth day of September, A. D. 1835; and that the said pretended grant was

made upon the conditions that the said Arceniega, or the person or persons to whom he might alienate the land in said grant described, should cultivate the same within six years from the acquisition thereof by said pretended title, and pay for said land the price established by law. And the defendant says, that the said Arceniega, and those claiming said land under him, wholly failed to comply with said conditions.

7. And the said defendant says, that the said plaintiff claims the land described in his petition under and through a pretended grant purporting to have been made to one Miguel Arceniega by authority of the government of the State of Coahuila and Texas, bearing date, to wit, the twentieth day of September, A. D. 1835, and under and through a pretended chain of transfers from said Arceniega to plaintiff; and that within six years from the date of said pretended grant, and before the annexation of Texas to the United States, the said pretended transfers were made to said plaintiff; and that the plaintiff was not, at the date of said pretended grant to him, and previous thereto had never been, a resident citizen of Texas or Mexico, but was then, and thence hitherto continued to be, a resident and citizen of the United States of America, owing and paying allegiance to the government thereof.

8. And the said defendant further answering says, that he is the owner of the following tracts or parcels of land, to wit: Three hundred and twenty acres, situated about 12 miles S. W. of Port Caddo, on lake Soda, and about three miles E. of S. of William Woods, on the Trammel trace, and about 18 miles N. E. of Ramsdale's ferry, on the Sabine river, and on the dividing ridge between the waters of Ferry lake and the Sabine river, it being the quantity of land to which the defendant is entitled by virtue of a bounty land claim issued to John Peoples, numbered 1087, dated December 18th, 1837, signed Barnard E. Bee, Secretary of War, and transferred by said grantee to defendant, heretofore surveyed on, to wit, the 19th day of April, A. D. 1841, and commencing at the N. W. corner of George Adkin's survey, on Amy Dunman's east boundary line, a stake from which a post oak, 20 inches in diameter, bears S. 7° E., 24 vrs., marked W S and J P, and one ditto, 24 inches in diameter, bears N. 71° E., $27\frac{5}{10}$ vrs., marked W S; thence east with said Adkin's N. boundary line, and at 790 vrs., intersected the S. W. corner of a survey made for James Smith, a stake from which a red oak, 12 inches in diameter, bears N. 58° W., $11\frac{9}{10}$ vrs., and a red oak, 16 inches in diameter, bears N. 32° W., 41 varas, each marked W S; thence north with said Smith's west boundary line, and at 1,510 vrs., said Smith's N. W. corner, a stake from which a black jack, 18 inches in diameter, bears N. 65° E., $18\frac{3}{10}$ vrs., each marked W S; thence east with said Smith's north boundary line, and at 637 vrs., a stake from which a black oak, 12 inches in diameter, bears north 74° W., and one ditto, 12 inches in diameter, bears N. 31° W., $16\frac{5}{10}$ vrs., each marked W T & A A; thence north at 500 vrs. to a stake from which a black jack, 10 inches in diameter, bears S. 64° W., $8\frac{5}{10}$ vrs., and one ditto, 8 inches in di-

ameter, bears N. 80° W., $13\frac{6}{10}$ vrs., both marked W S and A A; thence west, and 1,427 vrs., intersected the east boundary line of Amy Dunnman's survey, a stake from which a black oak, 14 inches in diameter, bears 56° E., $23\frac{5}{10}$ vrs., and a hickory, 5 inches in diameter, bears S. 63° E., 21 vrs., each marked W S and A A; thence south with said Amy Dunnman's east boundary line, at 2,010 vrs., to the place of beginning, and six hundred and forty acres of land, by virtue of defendant's own head-right certificate, filed in the office of the county surveyor of Harrison county, and designating for survey, as follows: To commence on the northeast corner of Jedediah Peryne's survey; thence west to the southeast corner of a survey made by virtue of a land warrant issued to John Peoples, and by him transferred to defendant, William T. Scott; thence north with same 1,510 varas; thence east to another corner of same; thence north and east, to include 640 acres of land; said file and designation of said land made on, to wit, the fourth day of November, 1845; and one hundred acres situate in the southeast corner of a survey of one league and labor of land made by virtue of the head-right survey of Amy Dunnman, commencing at the southeast corner of said league and labor; and thence running north and west, so as to include one hundred acres in a square form; and three hundred acres of land lying north of and adjoining the said tract of one hundred acres, and on the east boundary line of the said league and labor, surveyed by virtue of the head right of Amy Dunnman. And defendant further says, that the following described tract of land, situate in Harrison, to wit, beginning at the S. W. corner of W. L's survey on the north boundary line of J. C's survey, from which a red oak bears S. 65° W., 18 inches in diameter, 10 varas distant, west, a red oak 20 inches in diameter, 30 vrs. distant; thence west with J. C's line 2,200 vrs. to the corner of J. C., R. H. and J. A., N. 40° E. a red oak 12 inches in diameter 30 vrs. distant, N. 26° E., a red oak 14 inches in diameter, 30 vrs. distant; thence north with R. H's line 1,605 vrs. to a stake, a corner S. 17 E., a post oak 20 inches diameter, S. 52° E., a red oak 15 inches in diameter, 30 vrs. distant; thence east 1,800 vrs. to a creek running N. E., at 2,200 vrs., a stake on W. L's line, S. 21° W., a post oak 12 inches in diameter, 30 vrs. distant; thence south with W. L's line, 1,665 vrs. to the place of beginning. All the bearing trees, marked J P, *was* surveyed, on, to wit, the fifteenth day of October, A. D. 1838, for George B. Adkins, assignee of John Graves, who was the assignee of Jedediah Payne; being the balance of land to which he was entitled, by virtue of a certificate of head right, number 55, dated the 1st day of February, A. D. 1838, issued by the board of land commissioners of San Augustine county, for one-third of a league of land, as the head right of said Payne; and the title to which said last mentioned tract of land is still outstanding in John Graves, by virtue of said head right certificate and said survey, by virtue thereof and transfer thereof, from the said George B. Adkins to the said John Graves; and the defendant says, that his possession of the said last mentioned land is by virtue of

the authority and title of the said John Graves, and as claimant under said Graves; and the said defendant says that he and the said Graves, under whom he claims as to the said last mentioned tract of land, and that he, in his own right and those under whom he claims, as to the several parcels of land above described, have had peaceable adverse possession of said several tracts of land, claiming the same by virtue of the certificates and files aforesaid, and the surveys aforesaid, with chains of legal transfers from the Government down to this defendant, and to those under whom he claims, for more than three years next before the commencement of this suit; and the defendant disclaims ownership and possession of any portion of the land described in plaintiff's petition, not included in the metes and bounds of the several tracts and parcels above set forth.

9. Said defendant further says, that the land claimed by plaintiff in his petition is located within the territory designated as the twenty frontier leagues, bordering on the United States of the North, in the act of the Congress of the Republic of Texas, approved January 9th, 1841, and entitled "An act to quiet the land titles within the twenty frontier leagues bordering on the United States of the North," and is claimed by plaintiff by virtue of said location made prior to the seventeenth day of March, A. D. 1836; and that said plaintiff, and those under whom he claims said land, did not commence an action to try the validity of said claim within twelve months from the passage of the act aforesaid.

And the defendant suggests to the court that he has had adverse possession in good faith of the said several tracts or parcels of land, for more than one year next before the commencement of this suit; and that, during said possession, he has made permanent and valuable improvements in the same, consisting of, to wit, one thousand acres, cleared and fenced, and divers good dwelling houses, gin houses, barns, corn cribs, orchards, out houses, &c., of great value, to wit, of the value of ten thousand dollars.

HENDERSON HILL,
FRAZIER & SHEDD,
Att'ys for defendant.

And afterwards, to wit, on the 12th day of April, in the year last aforesaid, the plaintiff, by his attorney aforesaid, filed his replication and demurrers to the *the* pleas in defendant's answer contained, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court, April term, 1850.

WILLIAM CHRISTY
vs.
WILLIAM T. SCOTT.
No. 191—Trespass.

[REC. CLXIX, D. T. 1851.]—2

Similiter [*to 2d plea.*]

2. And the plaintiff, by attorney comes, and as to the plea by the defendant secondly by him in his answer pleaded, whereof said defendant puts himself upon the country, he, said plaintiff, doth the like.

Demurrer [*to 3d plea.*]

And the said plaintiff, by attorney, comes and says, precludi non, by reason of anything in the defendant's third plea in his said answer pleaded, because he says the said plea and the matters and things therein contained are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1. The said plea in bar of plaintiff's action attempts to set up the want of the approbation or assent of the executive of the national government of Mexico to the issuance of a grant within the twenty border leagues, when the national colonization law, under which is sought the benefit of this bar, contains no prohibition to the issuance of said grant; but if at the time of the issuance of said grant there was any such prohibition, it only extended to making settlements within said border leagues.

2. The said plea in bar of plaintiff's action attempts to set up the issuance of a grant under which plaintiff claims, dated 20th September, 1835, without the approbation of the supreme executive of Mexico within the border leagues, but does not shew the nature or kind of said grant so as to enable the court to judge of its validity.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

Replication [*to 4th plea.*]

4. And for replication to the fourth plea by the said defendant in his said answer pleaded the said plaintiff says, precludi non, because he says the grant under which the plaintiff claims was issued by an authority, at the time of the issuance of the same, in the State of Coahuila and Texas, existing and competent to issue the same, and this he prays may be inquired of by the country.

Replication [*to 5th plea.*]

5. And for replication to the fifth plea by the said defendant in his said answer pleaded, the said plaintiff says, precludi non, because he says that the said grant under which the said plaintiff claims was not obtained or procured to be issued by fraudulent misrepresentations as in the said plea alleged, and this prays may be inquired of by the country.

Demurrer [*to 6th plea.*]

6. And as to the sixth plea by the said defendant in his said answer pleaded the said plaintiff says, precludi non, because he says the said plea and the matters and things therein contained are not sufficient in law to bar and preclude said plaintiff from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1. The conditions set forth in the said plea, as those upon which said grant was issued, as is manifest by the said plea, were conditions subsequent of which the defendant cannot take advantage upon a failure in their performance.

2. A failure to perform the conditions in said plea set out, might have been cause of the forfeiture of the estate passed by said grant in said plea set out on a proceeding in behalf of the State, but this is no reason why the defendant before forfeiture declared should, against the plaintiff, retain possession of the estate in said grant mentioned.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

Demurrer [*to 7th plea.*]

7. And as to the seventh plea by the said defendant in his said answer pleaded, the said plaintiff says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shows the following to wit:

1. The said plea in bar avers, that the estate in the premises, in the said petition mentioned, was transferred to said plaintiff while and during the time he was a citizen of the United States of America, and owing allegiance to the same, and an alien to the Republic of Texas; yet shows no forfeiture declared, on office found, so as to divest the estate vested by said transfer.

2. And the said plea is in other respects defective, informal, and insufficient, &c.

Replication [*to 8th plea.*]

8. And the said plaintiff, by attorney, comes and for replication to the defendant's eighth plea by him in his said answer pleaded says, precludi non, because he says that heretofore, to wit, on the
day of at, to wit, in the district aforesaid, and within three

years next before the commencement of this action, he, the said plaintiff, had good cause and right and title to enter in and upon, and to take possession of, the lands and tenements in his petition described, with the hereditaments and appurtenances thereunto belonging; and he did then and there, and within three years next before the commencement of his action herein, make entry in and upon, and take possession of, the said lands and tenements, with the hereditaments and appurtenances thereunto belonging, and was then and there lawfully seized and possessed of the same; and being so thereof lawfully seized and possessed as aforesaid, the said defendant, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, and within three years next before the commencement of this action, entered in and upon, and then and there with force and arms took possession of, the lands and tenements, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved him, the said plaintiff, therefrom, and so continued him, said plaintiff, so ejected, expelled, put out, and amoved, to the great damage of the said plaintiff, which trespasses are the same which in the said plaintiff's petition are set out, and whereof complaint is made; without this, that the said defendant had or held peaceable and adverse possession of the several tracts or parcels of land in said plea described, under color of title, for more than three years next before the commencement of this action, as in said plea alleged, and this he is ready to verify; wherefore he prays judgment, &c.

Demurrer [*to 9th plea.*]

9. And as to the ninth plea by the said defendant in his said answer pleaded the said plaintiff says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him, said plaintiff, from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shows the following, to wit:

1. The act of congress referred to in said plea, at the time of the approval thereof, since, and now, was not and is not the law of the land.

2. The said act of congress was made and intended to impair the obligation of contracts.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

ROB. HUGHES,
For plaintiff.

And afterwards, to wit, at a term of said court, begun and held as aforesaid, on the first Monday in the month of May, in the year last aforesaid, this case was continued until the next term.

And afterwards, to wit, at a term of said court, begun and held as aforesaid, on the first Monday in the month of December A. D. 1850, this cause was continued until next term.

And afterwards, to wit, on the 8th day of July, A. D. 1815, the plaintiff's attorney filed his withdrawal and demurrer to defendant's eighth plea, by leave of the court, in words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court, December term, A. D. 1850.

WILLIAM CHRISTY
vs.
WILLIAM T. SCOTT. } No. 191.

In trespass.

And now at this term comes the plaintiff, by his attorney, and by leave of the court first had and obtained, withdraws his replication to the eighth plea by the defendant in this behalf pleaded, and says precludi non, by reason of anything in the said defendant's eighth plea in this behalf pleaded, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for causes of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1st. The said plea avers that, that the said defendant and a certain John Graves, under whom he, said defendant, claims, as to a part of the land in said plea mentioned, had and still held peaceable possession of the same for more than three years next before the commencement of this suit under color of title; when, to produce a bar within the statute in such case made and provided, a possession under the circumstances, and within the time prescribed by said statutes, by said defendant, alone should have been set up.

2d. The said defendant by said plea avers, that as to a part of the lands in said plea specified, the title is yet outstanding in a certain John Graves; yet the said defendant, by his said plea, as to said land, attempts to set up in bar by reason of possession of the same for three years, under color of title, next before the commencement of plaintiff's action.

3d. The said defendant, by his said plea avers, that a portion of the land in said plea specified, and of which he, said defendant, claims to be the owner, by virtue of his, said defendant's, own head-right certificate, has not been surveyed, as by law required, to vest title in the same in said defendant; yet said defendant, as to the same, by his said plea attempts to set up in bar an adverse possession for three years next before commencement of plaintiff's action, under color of title.

years next before the commencement of this action, he, the said plaintiff, had good cause and right and title to enter in and upon, and to take possession of, the lands and tenements in his petition described, with the hereditaments and appurtenances thereunto belonging; and he did then and there, and within three years next before the commencement of his action herein, make entry in and upon, and take possession of, the said lands and tenements, with the hereditaments and appurtenances thereunto belonging, and was then and there lawfully seized and possessed of the same; and being so thereof lawfully seized and possessed as aforesaid, the said defendant, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, and within three years next before the commencement of this action, entered in and upon, and then and there with force and arms took possession of, the lands and tenements, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved him, the said plaintiff, therefrom, and so continued him, said plaintiff, so ejected, expelled, put out, and amoved, to the great damage of the said plaintiff, which trespasses are the same which in the said plaintiff's petition are set out, and whereof complaint is made; without this, that the said defendant had or held peaceable and adverse possession of the several tracts or parcels of land in said plea described, under color of title, for more than three years next before the commencement of this action, as in said plea alleged, and this he is ready to verify; wherefore he prays judgment, &c.

Demurrer [*to 9th plea.*]

9. And as to the ninth plea by the said defendant in his said answer pleaded the said plaintiff says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him, said plaintiff, from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shows the following, to wit:

1. The act of congress referred to in said plea, at the time of the approval thereof, since, and now, was not and is not the law of the land.

2. The said act of congress was made and intended to impair the obligation of contracts.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

ROB. HUGHES,
For plaintiff.

And afterwards, to wit, at a term of said court, begun and held as aforesaid, on the first Monday in the month of May, in the year last aforesaid, this case was continued until the next term.

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And afterwards, to wit, at a term of said court, begun and held as aforesaid, on the first Monday in the month of December A. D. 1850, this cause was continued until next term.

And afterwards, to wit, on the 8th day of July, A. D. 1815, the plaintiff's attorney filed his withdrawal and demurrer to defendant's eighth plea, by leave of the court, in words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court, December term, A. D. 1850.

WILLIAM CHRISTY
vs.
WILLIAM T. SCOTT. } No. 191.

In trespass.

And now at this term comes the plaintiff, by his attorney, and by leave of the court first had and obtained, withdraws his replication to the eighth plea by the defendant in this behalf pleaded, and says precludi non, by reason of anything in the said defendant's eighth plea in this behalf pleaded, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for causes of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1st. The said plea avers that, that the said defendant and a certain John Graves, under whom he, said defendant, claims, as to a part of the land in said plea mentioned, had and still held peaceable possession of the same for more than three years next before the commencement of this suit under color of title; when, to produce a bar within the statute in such case made and provided, a possession under the circumstances, and within the time prescribed by said statutes, by said defendant, alone should have been set up.

2d. The said defendant by said plea avers, that as to a part of the lands in said plea specified, the title is yet outstanding in a certain John Graves; yet the said defendant, by his said plea, as to said land, attempts to set up in bar by reason of possession of the same for three years, under color of title, next before the commencement of plaintiff's action.

3d. The said defendant, by his said plea avers, that a portion of the land in said plea specified, and of which he, said defendant, claims to be the owner, by virtue of his, said defendant's, own head-right certificate, has not been surveyed, as by law required, to vest title in the same in said defendant; yet said defendant, as to the same, by his said plea attempts to set up in bar an adverse possession for three years next before commencement of plaintiff's action, under color of title.

4th. The said defendant, by his said plea does not aver, that he, said defendant, was ever an actual settler upon the said land, of which, by his said plea, he claims to be in adverse possession.

5th. Though the said defendant, by his said plea, attempts to set up in bar an adverse possession, under color of title, for three years next before commencement of plaintiff's action herein, yet he does not shew that said color of title was duly proven and recorded.

6th. The said defendant, by his said plea, attempts to set up in bar of plaintiff's action adverse possession, under color of title, for three years next before the commencement of said plaintiff's said action, when by the perview of the statutes in such case made and provided, there can be no such bar; but if any, the bar must be, by such adverse possession, under such color of title, for three years next after cause of action accrued, and before commencement of action.

7th. The said plea, though in bar, does not make any case by which the plaintiff is barred of his action, by reason of any possession adverse, within the terms of the statute in such case made and provided.

8th. And the said plea is in other respects defective, informal, and insufficient, &c.

ROB. HUGHES,
For plaintiff.

And now, at this day, to wit, on the 9th day of July, A. D. 1851, being a day in the term first before mentioned, the following judgment was rendered, to wit:

This day came the parties aforesaid by their attorneys, and the questions of law arising upon the demurrers of the plaintiff to the third, sixth, seventh, eighth, and ninth pleas by the defendant in his answer pleaded, having been argued and submitted, because it seems to the court that the law is for the defendant; it is therefore considered by the court that the said demurrers be overruled; and the plaintiff stating that he intended to abide by his demurrers, it is further considered by the court, that the defendant go hence without day, and that he recover of the plaintiff his costs by him about his defence in this behalf expended, to be taxed by the clerk, &c.

And thereupon, on the 16th day of the said month of July, A. D. 1851, aforesaid, the plaintiff by his attorney aforesaid came into the clerk's office of the said court, and assigned error in the record and proceedings, and giving the judgment aforesaid, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court.

WILLIAM CHRISTY, plaintiff,
vs.
WILLIAM T. SCOTT, defendant. } 191—Trespass.

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And now, on this 16th day of July, A. D. 1851, comes the plaintiff aforesaid by his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1st. The defendant's third plea by him in his answer pleaded, attempts to set up in bar of plaintiff's action, the issuance of the grant under which the plaintiff claims, without the approbation of the executive of the Republic of Mexico, when by the law of the State of Coahuila and Texas, under which said grant was issued, there was no prohibition to the issuance of said grant without such approbation, and the said fact pleaded is no bar; yet the said court overruled the plaintiff's demurrer to said plea, and gave judgment for defendant, when said demurrer, according to the rules of law, should have been sustained.

2d. The said defendant by his sixth plea in his said answer pleaded, attempts to set up in bar of the plaintiff's action aforesaid the non-performance of conditions subsequent, without shewing re-entry or other mode of enforcing a forfeiture of the estate granted; yet the court overruled the plaintiff's demurrer to said plea, when, according to the rules of law, the same should have been sustained.

3d. The said defendant by his seventh plea in his answer pleaded, attempts to set up in bar of plaintiff's action the fact that the lands claimed and sued for by the plaintiff in his petition described, were sold and transferred to the said plaintiff while and during the time he was a citizen of the United States of America, owing allegiance to the same, and an alien to the Republic of Texas, without shewing any office found, or forfeiture declared in any manner whatever; yet the court overruled the plaintiff's demurrer to said plea, when, according to the rules of law, the same should have been sustained.

4th. The said defendant by his eighth plea in his said answer pleaded, insists upon a bar by and under the fifteenth section of an act of Congress of the Republic of Texas, entitled "an act of limitations," approved February 5th, 1841, but by said plea does not show or allege that he was a settler on the land in question, having had and held continuous adverse possession of the same, under title duly proven and recorded, or under color of title for three years next after cause of action accrued, and before action brought, as by the rules of law he should have done; yet the said court overruled the plaintiff's demurrer to said plea, when, according to the rules of law, it should have been sustained.

5. The said defendant, by his ninth plea in his answer pleaded, attempts to set up in bar of plaintiff's action the failure to commence action within twelve months after the passage of an act by the congress of the Republic of Texas, entitled "an act to quiet land titles within the twenty frontier leagues bordering on the United States of the North, to try the validity of the grant under which plaintiff claims, when it is apparent that said grant, under which plaintiff claims, was a perfect, and not an imperfect or inchoate title, and as to which the government of the Republic of Texas had no legitimate power or authority to re-

quire or prescribe the commencement of any suit in the form and manner the same was prescribed, to try the validity of the title vested by said grant, or create a bar in consequence of a failure to commence said suit; yet the demurrer to said plea was overruled by said court, when the same, according to the rules of law, should have been sustained.

And the said plaintiff prays a writ of error to be directed, &c., and that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, &c.

ROB'T HUGHES,
For plaintiff.

And afterwards, to wit, on the 19th day of the month of July last aforesaid, the said plaintiff gave bond, with security, in the words and figures following, to wit:

WILLIAM CHRISTY
vs. } In error.
WM. T. SCOTT.

Know all men by these presents, that we, William Christy, of Louisiana, and Robert Hughes, of the city of Galveston, in the State of Texas, are held and firmly bound unto the above named William T. Scott, in the sum of two hundred dollars, to be paid to the said William T. Scott, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 19th day of July, A. D. 1851.

Whereas the above named William Christy hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit, by the district court of the United States, for the district of Texas: Now, therefore, the condition of this obligation is such, that if the above named William Christy shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

WILLIAM CHRISTY, [SEAL.]
By attorney, ROB. HUGHES,
ROB. HUGHES. [SEAL.]

Sealed and delivered in presence of, and approved by—
JOHN C. WATROUS.

Whereupon writ of error was issued in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the district court of the United States, for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a

judgment in a plea, which is in the said district court of the United States, for the district of Texas, before you, between William Christy and William T. Scott, a manifest error hath happened to the great damage of the said William Christy, as by *their* complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, then under seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this sixteenth day of [SEAL.] July, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United [States] the seventy-sixth.

JAMES LOVE, *Clerk*.

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

WILLIAM CHRISTY
vs.
WM. T. SCOTT.

I, James Love, clerk of the district court of the United States for the district of Texas, certify, that the above and before written is a true copy of the record and all the proceedings had in the above entitled cause.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Galveston, this thirteenth [SEAL.] day of September, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JAMES LOVE, *Clerk*.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the district court of the United States, for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said district court of the United States for the district of Texas, before you, between William Christy and William T. Scott, a manifest error hath happened to the great damage of the said William Christy, as by *their* complaint appears; and